

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

CENTRIPETAL NETWORKS, INC.,

Plaintiff,

v.

CISCO SYSTEMS, INC.,

Defendant.

CIVIL ACTION NO.
2:18cv94

TRANSCRIPT OF PROCEEDINGS (Via Zoom)

Norfolk, Virginia

June 7, 2023

BEFORE: THE HONORABLE ELIZABETH W. HANES
United States District Judge

APPEARANCES:

KAUFMAN & CANOLES, P.C.

By: Stephen E. Noona

And

KRAMER LEVIN NAFTALIS & FRANKEL LLP

By: Paul J. Andre

Lisa Kobialka

James R. Hannah

Counsel for the Plaintiff

TROUTMAN SANDERS LLP

By: Dabney J. Carr, IV

And

DUANE MORRIS, LLP

By: Louis N. Jameson

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And

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By: Charles K. Seyfarth

Counsel for the Defendant

1 (Hearing commenced at 3:34 p.m.)

2 THE COURT: Good afternoon, everyone. I can see
3 everybody.

4 Madam clerk, will you call our next matter.

5 THE CLERK: Civil action number 2:18cv94,
6 Centripetal Networks, Inc., versus Cisco Systems, Inc.

7 Ms. Kobialka, is the plaintiff ready to proceed?

8 MS. KOBIALKA: Yes, Your Honor. And I wanted to
9 note that our local counsel hasn't shown up yet. It looks
10 like he's just logged on. Never mind. So I think we are
11 all set and ready to go. Thank you.

12 THE COURT: All right. Thank you. Good afternoon
13 to you all.

14 THE CLERK: Mr. Jameson, is the defendant ready to
15 proceed?

16 MR. JAMESON: Yes, Your Honor.

17 THE COURT: All right. Good afternoon,
18 Mr. Jameson.

19 MR. JAMESON: Good afternoon.

20 THE COURT: Let me first ask, who will be speaking
21 for Centripetal?

22 MS. KOBIALKA: Lisa Kobialka. I will be.

23 THE COURT: Kobialka is how you say your last name?
24 All right.

25 MS. KOBIALKA: That's correct.

1 THE COURT: Mr. Andre is here. I was going to have
2 you tell him that I missed him today, but I see that he's on
3 the call.

4 Then for Cisco?

5 MR. JAMESON: Your Honor, Woody Jameson is speaking
6 on behalf of Cisco.

7 THE COURT: All right. Then I understand, I think
8 Centripetal, you indicated that you may have some initial
9 issues that you want to address.

10 MS. KOBIALKA: It's actually towards the end, just
11 a procedural matter, and if you like, I can just address
12 that briefly right now.

13 THE COURT: That's okay. There are some other
14 procedural matters that I think we will need to take up at
15 the end of this call, so we will handle that then.

16 So we are here today on Cisco's motion to sever and
17 stay the case as to the '856 patent that was filed at
18 ECF 687. I considered and denied a similar partial stay
19 motion in January, and really, effectively, Cisco's renewing
20 their motion but is also seeking severance because of the
21 recent final written decision issued by the Patent Trial and
22 Appeal Board, finding that all the '856 patent claims are
23 unpatentable, and this does include Claims 24 and 25, which
24 were both asserted by Centripetal in their trial held before
25 Judge Morgan.

1 I did grant expedited briefing on this motion given
2 the limited time between now and our Rule 63 hearing. I do
3 want to try to rule orally on the motion this afternoon for
4 that same reason.

5 I have received your briefing, read it, as well as
6 the cases that you cite, and your exhibits. I'm happy to
7 hear from you if there is some additional argument you want
8 to make. So I'll do that now.

9 Mr. Jameson.

10 MR. JAMESON: Yeah, Your Honor. I'm not going to
11 repeat all the arguments in our briefing. I think our
12 position is pretty well laid out. I would just like to make
13 maybe a couple of big-picture observations. The landscape
14 has obviously changed dramatically since we filed our
15 original motion to stay.

16 The argument against that motion was it was
17 speculative as to what might happen in front of the patent
18 office. Now we know that the agency that actually issued
19 the patent has now said that that patent is invalid, and we
20 think that that is obviously a substantial factor in
21 evaluating whether to sever and stay the case.

22 The other observation I would make, and it's
23 related to the first point, and it really goes to in
24 evaluating whether to stay the case, it's the deference that
25 the Court may give to the patent office's specialized

1 expertise in this field. That is not played up in the
2 briefing, but it was noted by Judge Schroeder in the *Motion*
3 *Games* case out of the Eastern District of Texas, which we
4 cited in the briefing. It was quoted in our opening brief
5 that, "There comes a point at which any prejudice to the
6 plaintiff in staying the litigation is significantly
7 outweighed by a determination that patent claims are invalid
8 by the 'expert agency' in the field. Typically, at that
9 point, any further expenditure of party or judicial
10 resources on invalid claims is unwise," and that's basically
11 our position in this case.

12 I would also note that in the *Virginia Innovation*
13 case, Judge Davis actually has a section in his opinion that
14 discusses the deference of the PTAB decisions, and that's at
15 983 F.Supp.2d 764, and he basically makes the same point
16 that Judge Schroeder did. He talks about only the patent
17 office can issue patents. District courts can't issue
18 patents. And as a result of that, he states, "The Court
19 therefore generally gives deference to final PTO decisions,
20 based in part on the PTO's specialized knowledge and
21 expertise."

22 Against that backdrop, I want to briefly just talk
23 about prejudice. The parties can fight about who has been
24 prejudiced in this case. I would argue that we have been
25 prejudiced by having to defend against 11 patents, eight of

1 which have now been found invalid. Centripetal argued that
2 they were being prejudiced by the possible stay when we
3 didn't know what the patent office was going to do several
4 months ago.

5 But now we have a different situation, and we have
6 been fighting and expending resources litigating against a
7 patent, the '856 patent, for a long time. That patent is
8 now invalid, and the idea that we have continued litigating
9 against a patent that is now invalid, to me, is about as big
10 a prejudice as you could find on the scale of that issue. I
11 just wanted to point that out.

12 Otherwise, you know, absent questions from you,
13 again, I think the briefing lays out our position fairly
14 well.

15 THE COURT: Thank you, Mr. Jameson. I agree it is
16 laid out pretty well.

17 Ms. Kobialka. I'm sorry. I didn't get it right
18 this time, but I will try.

19 MS. KOBIALKA: No, it's very close. It's very
20 good. Yeah, I'd like to just take on head-on the law issue.
21 There is no law where we have this particular situation,
22 where we actually have a complete trial already done, right.
23 At this point all we are really talking about is a Rule 63
24 hearing with very limited parameters around it. And so, you
25 know, this is very different from all the cases that were

1 cited, because it just doesn't exist. There is nothing else
2 in the law there. So I really think that that is an
3 important point to make because they cite to a lot of cases,
4 they distinguish it, but in reality, we don't have anything
5 that squarely fits where we are. As much as you want to
6 talk about that PTAB has made certain determinations and
7 certain claims, the entire patent '856 is not invalid.
8 There are certain claims based on the written final decision
9 that's out there. The law stands that there is no
10 collateral estoppel effect until this is all confirmed on
11 appeal, it is not done yet. The law is not in Cisco's favor
12 on that particular point.

13 I do think it's very important to address the
14 prejudice, because this delay is significant to Centripetal,
15 and when you have a situation where justice has been denied
16 and justice is delayed, you've effectively given Centripetal
17 no ability to have its complete day in court and remedy for
18 all that has occurred. This case was filed on February
19 20th, 2018, so that is over five years ago.

20 The idea that, you know, Centripetal had brought
21 this case that many years ago, faced numerous hurdles with
22 respect to the various patents, went through an entire
23 costly and very time-consuming trial and an appeal, and it
24 was brought down on a conflict issue, somehow means now we
25 get to piecemeal this one additional patent, and there is

1 that risk. There is a risk that it's not going to be
2 confirmed on appeal by the Federal Circuit because this
3 particular IPR, unlike really all the other ones and all the
4 statistics that we have looked at, is very different.

5 You know, the history behind the IPRs, and this --
6 in particular this '856 IPR, is a significant one because
7 here we had Cisco, who had a chance to file an IPR, and they
8 didn't for the '856 when the litigation was ongoing.

9 Only after there was the Cisco judgment by Judge
10 Morgan was there an IPR filed on the patent, but that was
11 filed by *Palo Alto Networks*. Now, *Palo Alto Networks* has no
12 interest in this patent, so the only beneficiary to making
13 some sort of a determination regarding validity on the '856
14 is Cisco. Cisco moved to join that IPR because it was now
15 time barred by statute, so it didn't have the ability to
16 pursue an IPR. And around the same time Centripetal learned
17 that one of the law judges owned stock of up to \$15,000.
18 If it owned more than \$15,000, by the way, it would be a
19 crime. It's actually a criminal penalty that's applied to
20 it.

21 So here we have a situation, sort of unlike any
22 others, where we have Centripetal, who's judgment was wiped
23 out due to Judge Morgan's wife's ownership of stock and the
24 blind trust not being sufficient, and the judgment was
25 contrary to his own ownership interest where you have an

1 APJ, so an Administrative Patent Judge, who knowingly had
2 the stock, was issuing determinations in favor of his own
3 interest before he recused himself and did all this while
4 the motion to recuse was on file.

5 I don't think that that set of facts fits squarely
6 within any of the cases or the statistics, and if there was
7 ever a party who had a right to raise this particular issue
8 of a conflict, it's Centripetal, given what has happened.

9 So I think it's important to keep all of that in
10 perspective, and so the idea of the deference to the PTAB
11 and things like that, I don't think really apply here given
12 what we have going, which is we are going to go and complete
13 the Rule 63 hearing on at least three patents. There isn't
14 that much more to do.

15 I don't want to minimize the Court's work in having
16 to write, you know, an opinion regarding the '856 patent. I
17 recognize that, but there is real benefits to trying to do
18 that all at one time, wrap it up and hand the case over to
19 the Federal Circuit so it goes from your docket onto the
20 Federal Circuit's docket because, as you can tell, this will
21 probably get appealed again.

22 THE COURT: That, I'm certain of. Well, thank you
23 for your argument. Let me first just discuss the motion to
24 stay. We've talked about this more than once, and you all
25 know that there are three factors that I need to consider,

1 and I'll go through each of those. As to the stage of the
2 litigation, I said this in January, and I think it's true,
3 that the stage of litigation here has advanced given that a
4 trial has already been conducted. The '856 patent claims at
5 issue were litigated in that trial, and I would find, as I
6 did then, that factor does weigh against granting the stay
7 that's requested by Cisco.

8 I also have to consider the simplification of the
9 issue, and I do agree with Centripetal on this point, which
10 is, I think it is difficult to compare this case to any
11 other case that either of the parties cited because the
12 facts of this case, the posture of this case are so unique
13 that it's difficult to look at other cases and use that as a
14 guide for what should happen in this, especially as it
15 relates to simplification of the issues. But I will find
16 that because the '856 patent claims have been invalidated by
17 the patent office, that the simplification factor does weigh
18 in favor of granting the stay at this point, given the facts
19 of this case specifically.

20 Centripetal has argued before me in other cases
21 that the affirmance rate by the Federal Circuit of decisions
22 of the PTAB is above 75 percent, and I think that is
23 relevant here. I have read some of the arguments that
24 Centripetal's made before the Federal Circuit regarding
25 their appeal and their objections and the conflict that they

1 allege relating to the PTAB proceedings, but I think the
2 fact that it is a 75 affirmance rate is very important.

3 If it is affirmed on appeal, then the '856 patent
4 claims drop out of this case completely, and that is a
5 different degree of simplification than what I had to
6 consider in January. If I do not stay as it relates to the
7 '856 patent, there is a significant risk that the parties
8 and the Court will expend significant resources deciding
9 issues that later become moot.

10 Certainly, I think Cisco tried to point out the
11 multiple legal issues that may arise if this isn't stayed,
12 and I suspect Centripetal disagrees that I would need to
13 decide some of those issues. But even considering just the
14 issues that I would need to decide at the Rule 53 hearing,
15 certainly there is significant simplification if I don't
16 have to consider the '856 patent claims.

17 I have recognized in the past that this case does
18 involve overlapping technologies, and I think that's
19 accurate, but, nevertheless, I find that the potential
20 streamlining to be outweighed by the risk of additional work
21 on the '856 patent, that simply just goes out the door if
22 the PTAB decision is affirmed. So I do find that
23 simplification weighs in favor of granting the stay.

24 I do have to also consider prejudice, and I find
25 this is fairly neutral, and, frankly, I think Centripetal

1 thinks of this in somewhat of kind of the wrong way, because
2 at this point an expert body, being the PTAB, has found that
3 the asserted '856 patent claims are unpatentable, and so
4 there is some chance that that could be reversed on appeal.
5 But I don't see how the failure to move forward on
6 adjudicating the '856 patent prejudices Centripetal. The
7 delay really is the delay caused by the PTAB decision and
8 the appeal, and that would create delay regardless of what I
9 do here.

10 So the delay relates to that, not so much anything
11 that I do here. I also would recognize that if the appeal
12 is successful, I wouldn't need to then hold another Rule 63
13 hearing, and certainly that would entail some costs, but I
14 have to look at also how the parties have presented the
15 upcoming Rule 63 hearing, the fact that it currently would
16 only involve one witness, the speed at which we were able to
17 set the upcoming Rule 63 hearing.

18 So I don't find that there would be significant
19 prejudice at that stage. I also think I would be proceeding
20 with the benefit of having already conducted the upcoming
21 Rule 63 hearing, having considered the arguments of the
22 parties, and, therefore, could deal with any remanded claim
23 fairly quickly. So based on all of that, I find that the
24 totality of the circumstances weigh in favor of granting the
25 partial stay requested by Cisco, and so to the degree that

1 your motion requests that, it will be granted.

2 You did also request severance, and I'll just touch
3 on that very briefly. I do not think severance is
4 appropriate. There is a presumption against severance.
5 There was already a trial in this case, and the '856 patent
6 claims were tried alongside the other patents.

7 Cisco has not requested severance prior to this
8 date, and really I don't see that there is a sufficient
9 differentiation between the issues, the witnesses. You look
10 at each of the elements that are related to severance. One,
11 I don't really think that the argument was presented, but
12 even if I considered the argument that was presented, I
13 don't think there is a basis to sever in this case, and so
14 to the extent that that was requested, I'll deny that
15 portion of Cisco's motion.

16 I do need to talk to you all about some other
17 things, and so let me first, I've reviewed a substantial
18 portion of the transcripts as well as some of the exhibits.
19 Based on my review, we requested of Centripetal, through
20 your local counsel, copies of the trial transcripts, a copy
21 of the exhibits, and two copies of the witness-specific
22 binders. I have not yet received those, and I'm
23 definitely going to order to have them by Friday. Let me
24 just flag for you in part why.

25 There are some exhibits, and I'm not a hundred

1 percent confident that the exhibits that the Court has is
2 complete, and so I think there may be exhibits that are
3 missing or instances where, for example, I only have a cover
4 page of an exhibit and not the subsequent pages. So, for
5 example, Exhibit PTX231, the copy that I have is only a
6 cover page and not anything else as part of the document.

7 I know in part Cisco has asked to supplement.
8 Setting that issue aside just momentarily, this is different
9 than that, and so my concern is I want to be 100 percent
10 confident that I have a complete and accurate copy of the
11 exhibits, and I cannot say with certainty that that is what
12 I have right now. So I do need a complete copy of that.

13 There is separately numerous instances in which
14 there were references within the transcript to things that I
15 also don't have, which were not exhibits. So, for example,
16 five presentations, demonstrative exhibits. There were
17 videos of depositions, for example, relating to PTX1910. So
18 we have the transcript, but also the videos were played. I
19 would prefer to look at the videos, and I don't have those.

20 So I know that those are not in the record, but
21 Judge Morgan reviewed those, and they are also referenced
22 fairly significantly in some of the witness testimonies, and
23 so I think it would be preferable that I have those
24 available to me so I can go back and check them.

25 Then a separate issue would be there were, I

1 believe, deposition binders and exhibit binders by a witness
2 and then also summaries of points of law that each side
3 intended to present through each witness that were presented
4 to Judge Morgan at the beginning of each morning. I don't
5 have those either, and so, frankly, that's something I
6 would have thought you guys would have given me already, but
7 I don't have it.

8 Let me just ask, I don't know who really would be
9 the person to answer this, but what I'm going to do is order
10 that I get them by Friday, but if you anticipate that there
11 is some issue, I guess let's talk about that.

12 Mr. Noona, you took yourself off mute, so looks
13 like you might be the person.

14 MR. NOONA: I did, because I'm not sure. You
15 indicated that I'd been asked to provide certain specific
16 things. I know that the lead counsel has asked if certain
17 things existed, and we checked with chambers to see if they
18 had it, but I'm going to have to go back. I apologize. I
19 don't specifically have a request, and I was trying to look
20 at my e-mails for this stuff, but we will definitely get
21 what we have to you.

22 I know there was a question as to whether
23 demonstratives still existed because they were tendered each
24 morning, and, of course, Lori is no longer with the Court,
25 and we checked with your clerk on that as well to see, you

1 know, if those things were available and around. I
2 understood that the exhibits were present, the transcript
3 was present, and this is the first I'm hearing of the video
4 depositions and some of the other things that you may be
5 missing.

6 But we will go to work, and if we have them, we
7 will certainly provide them to you.

8 THE COURT: So I just want to say one more time, so
9 there is no miscommunication, what I understood we had asked
10 for were two copies of the trial transcript, preferably
11 double-sided, probably, frankly, at this point two copies of
12 the exhibits. We had asked for that. Then I think there is
13 a category of non-court records, meaning non-exhibits and
14 non-transcripts that I think the Court likely would have
15 never retained, like demonstratives or slide presentations
16 and the videos of the depositions. That, I think, we will
17 also need.

18 I neglected to say this previously, there is a
19 couple of instances where the deposition excerpts were not
20 read into the record, and so clearly Judge Morgan had a copy
21 of the deposition, he turned to it, and at some point he
22 read that for impeachment purposes, but it wasn't read into
23 the record, and so I don't have that available to me either.
24 Then that separate category would be the things that you
25 provided to Judge Morgan close in time to the trial to

1 assist him as witnesses testified.

2 MR. JAMESON: Your Honor, Woody Jameson. On that
3 last category, do you want two copies of all of that as well
4 or just one copy?

5 THE COURT: Of the demonstratives and the slide
6 presentations, those things?

7 MR. JAMESON: Right.

8 THE COURT: I'd say two.

9 MS. KOBIALKA: May I ask a few questions? So in
10 terms of things that were provided to Judge Morgan, those
11 included witness summaries. He had requested that those be
12 provided before the witness went up. So we can pull
13 together, I think, what we have on the demonstratives. The
14 parties didn't necessarily exchange them, so I don't have
15 Cisco's demonstratives, and they don't have ours, if I'm
16 recalling correctly. So would you like us to separately
17 submit those, or do it all at one time so you have a
18 complete set of the demonstratives?

19 THE COURT: I think at this point I just want to
20 make sure I get them as soon as possible, and so I expect
21 that it will be simpler for you to separately submit them,
22 and that's fine.

23 MS. KOBIALKA: And then on the exhibits, do you
24 want the complete exhibits, not just what was entered into
25 evidence? I want to make sure because some of them were 500

1 pages along, so...

2 THE COURT: Let me address that. I understand that
3 this is partially addressed in Cisco's motion to supplement.
4 What I think would be simpler at this stage is that I get
5 one copy in a separate binder of the completed document, and
6 I know I'll need to rule on Cisco's motion, but that way
7 I'll have it, and it actually, I think, will assist me in
8 ruling in that motion so I'll understand what the
9 disagreement is, if any. That's the one thing I do not need
10 two copies of.

11 MS. KOBIALKA: All of the exhibits, right?

12 THE COURT: The complete exhibit.

13 MS. KOBIALKA: Okay. So we will send one copy of
14 the exhibits. I think that was all the questions that I
15 had. We should be able to get that to you. For the video
16 depositions, it's fine to put them on some sort of a drive
17 and submit those to the Court in that manner? I think,
18 likewise, demonstratives may have had some animations in
19 them as well, so we can provide all of that at the same
20 time.

21 THE COURT: Yes. That would be fine.

22 MR. JAMESON: Your Honor, I know we are doing this
23 real-time, but I was going to make a suggestion that Cisco
24 be responsible for all of its exhibits that it admitted, and
25 Centripetal be responsible for all of its exhibits that it

1 had admitted so that we don't inundate you with more than
2 you need, and that we will be responsible for our witness
3 statements, our demonstratives, any video that we entered
4 into the record, and I think that would probably be the most
5 efficient way of getting that to you.

6 THE COURT: All right. Centripetal, do you have
7 any objection to that?

8 MS. KOBIALKA: On the exhibits, I think we've
9 already prepared all of the exhibits, so I can double-check
10 on that. The other matters, though, is fine. We will just
11 need to make sure that we do an exchange so we know what the
12 Court is getting, and likewise, but that's not a problem.

13 MR. JAMESON: Sure.

14 THE COURT: All right. Do either of you have any
15 concern that you may not know, for example, what copies or
16 version was used at trial? Is that a concern that you think
17 we will need to address?

18 MS. KOBIALKA: Not for Centripetal. That should
19 not be a concern for us. We have double checked that issue.

20 MR. JAMESON: Your Honor, I don't think that is
21 going to be an issue as well.

22 THE COURT: All right. Okay. Were there other
23 housekeeping matters that you all needed to address?

24 MS. KOBIALKA: The one other thing I wanted to
25 raise was, in Cisco's trial briefs that they filed last

1 Friday, they had mentioned a number of materials that were
2 not in the record and that are also not subject to their
3 motion to supplement the records, and so we wanted some
4 guidance on the best way to address that particular issue.

5 They made some references to different parts of
6 their prosecution history that are not part of the record,
7 for example, among some other things. So we didn't know --
8 there is no real formal mechanism, as I understand it, to do
9 an objection. I didn't know if you wanted us to go through
10 the whole motion to strike process or if there was some
11 other way just to alert you to that issue.

12 THE COURT: Can you just give me an example? You
13 mentioned one, but just state that again.

14 MS. KOBIALKA: Sure. So, for example, they have
15 cited to portions of their prosecution history in their
16 trial brief that are not part of the record. They cited to,
17 you know, four or five pages that were not admitted in the
18 record. In PTX1, for example, Pages 24 through 26 was
19 admitted, but they included it all the way through 30.
20 Those are the types of examples. We have identified, you
21 know, at least, I think, three or four different documents
22 that they referenced in their trial brief.

23 THE COURT: All right. Mr. Jameson.

24 MR. JAMESON: Your Honor, this is the first I'm
25 hearing of this, and so it's lacking context for me. What I

1 don't know is whether we inadvertently included some
2 additional pages or we have a typo in by way of a cite. I
3 really, this is lacking context, so I don't really know how
4 to respond.

5 THE COURT: All right. Let me ask this. The
6 motion to supplement your response, is it due on Friday?

7 MS. KOBIALKA: I believe Thursday, if I'm not
8 mistaken. Yeah.

9 THE COURT: I don't want to presume that. It's
10 hard to answer your question. I think what you need to do
11 is meet and confer. Frankly, I mean, it may be that Cisco
12 then would move to supplement, and, frankly, I'd try to
13 streamline it and say, let's try to deal with any
14 supplementation at one time, it would be my goal, and maybe
15 it is inadvertent, we don't need to deal with it.

16 So I would say talk about it. I'm going to have to
17 look at the motion to supplement regardless, and so I think
18 it would seem to me that it may be best to try to
19 incorporate it as it relates to that. I understand you're
20 just a couple of days away from your response.

21 Frankly, I just ask you all to talk about it and
22 see if there is some resolution that can be reached before I
23 need to make a decision.

24 MS. KOBIALKA: Okay. And would it be possible if
25 we are not able to reach some sort of resolution that then

1 we work through the briefing schedule for that particular
2 motion, if we were to deal with it at one time? So, you
3 know, I just raise that as a possibility as well. I wanted
4 to make sure that that would be one of the ways to
5 appropriately deal with it.

6 THE COURT: Would be through the briefing? Is your
7 question, can you deal with it through the briefing or to
8 have additional briefing?

9 MS. KOBIALKA: Correct, to deal with additional
10 briefing, and then we would have a little more time to
11 respond if, in fact, they did intend to try and supplement
12 the record with additional documents. So you do it one
13 time, basically.

14 THE COURT: I'd prefer it be handled at one time
15 because I suspect that the arguments are fairly similar, and
16 so it would seem to me that if you needed an extra day or so
17 to respond, that would be preferable from my standpoint than
18 doing a whole fresh set of briefing on a similar issue.

19 MS. KOBIALKA: Thank you. I understand.

20 THE COURT: Okay. Anything else?

21 MS. KOBIALKA: Centripetal doesn't have anything
22 else.

23 THE COURT: Mr. Jameson.

24 MR. JAMESON: Your Honor, I didn't know, were you
25 going to turn to the hearing next or are you done from your

1 perspective?

2 THE COURT: I am fairly done from my perspective.
3 Are there things really in the hearing you want to ask
4 about?

5 MR. JAMESON: Well, just put an issue on the table.
6 The hearing is currently scheduled to begin on Thursday,
7 Thursday, Friday and then carry over to Monday, Tuesday. I
8 didn't know if you had any thoughts at this point what a
9 given day may look like, and part of the reason why I'm
10 asking that relates to when we are going to call what is now
11 going to be our only witness at this point, Mike Scheck,
12 whether there were logical stopping points where you take
13 any information you want to think about before we go to the
14 next stopping points on these various patents, and what I
15 mean by that is, we could hypothetically do the tech
16 tutorials on Thursday, we could do witnesses on Friday, we
17 might do a Q&A on a given patent on Friday as well, take a
18 break, and then do more of it the following week. We could
19 also just motor through non-stop from whatever your hours
20 are, and I just didn't know whether you had any thoughts on
21 that at this point.

22 THE COURT: How long do you anticipate your
23 tutorial to be?

24 MR. JAMESON: In light of your ruling, it's not
25 going to be nearly as long as what we thought it was going

1 to be because we are not going to be teaching encryption.
2 I'm going to actually turn this one over to Mr. Gaudet to
3 see if he is willing to make an educated guess at this
4 point.

5 MR. GAUDET: Your Honor, good afternoon. This is
6 Matt Gaudet. I was the person at the podium guiding our
7 tutorialist last time, and I was on my feet for about two
8 and a half hours, I think, last time around. So that's
9 probably somewhere in the ballpark.

10 THE COURT: All right. Centripetal, would you say
11 the same?

12 MS. KOBIALKA: I think it would be, yeah, at least
13 that. I need to double-check. I think Paul Andre is on the
14 line. He might know better. So just as it got passed off
15 to Mr. Gaudet, I might pass it off to Mr. Andre. He may
16 have --

17 MR. ANDRE: Your Honor, this is Paul Andre. I'm
18 sorry I'm not on camera; I'm not addressed appropriately.
19 I'm traveling today, so I'm in a Cracker Barrell parking
20 lot, of all places.

21 Anyway, that being said, I think two to three hours
22 would be appropriate as well.

23 THE COURT: All right. So typically given that,
24 what I likely would do is, we can plan to do the tutorials
25 on Thursday, and I suspect they would take up most of the

1 day. So we will start at 10:00 on Thursday. The only
2 caveat is if you all file a bunch of things I'm going to
3 have to deal with on Thursday, I might need you here a
4 little earlier than that. Because I do want to do the
5 tutorials in their total on Thursday -- so that's my only
6 hesitation with that -- and then proceed to witness
7 testimony on Friday.

8 I suspect you all will want to make -- maybe this
9 isn't the case, but Mr. Jameson, I mean, kind of anticipated
10 that there would be some opening-like arguments,
11 closing-like arguments that we will need to work in. But
12 generally I think the goal would be to take the rest of the
13 evidence on Friday.

14 In my mind, given that you only had one witness, I
15 had thought we probably could do everything we needed to do
16 on Friday. Typically, I'd start at 9:30, go to about noon,
17 maybe take a quick morning break, take a one-hour lunch
18 break, start back up pretty quickly, and then take an
19 afternoon break and go until 5:00. So that was my plan, and
20 certainly we have Monday and Tuesday available if necessary.
21 But I suspected that you all might not need Monday and
22 Tuesday given what you wanted to present thus far.

23 MR. JAMESON: Your Honor, based on what we have
24 been preparing, and we are going to have to be -- I'm
25 totally going to be guided by you because our goal is to be

1 in a position to respond to the questions that you have on
2 Friday and Monday about these patents, and where we are
3 joining issue and those kinds of issues.

4 I actually could see that each module for our
5 patent could take some time to really walk through what the
6 evidence shows and what our positions are and really develop
7 those arguments for you, whether you call it a closing or
8 Q&A, or whatever it is.

9 So I think we are going to need Monday, in our
10 perfect world. What we did last time, and I was thinking
11 that we were going to do again, is that after we put up the
12 witness testimony, that likely each side would take a few
13 minutes to kind of try to set the lay of the land as to
14 where we are and some big-picture dramatics, and then each
15 side would go back and forth and dive into the various
16 patents and present their arguments on the patents with
17 whatever questions Your Honor has. Then at some point we
18 are going to get to the issues of willfulness and damages,
19 and those would be additional modules that we would have to
20 address.

21 So that's the approach we used last time. If we
22 use that approach this time, I believe that we would be
23 working our way into Monday for sure.

24 THE COURT: All right. That's fine. I've got
25 Monday and Tuesday. It's blocked. Frankly, I'm not trying

1 to rush you through. You all are experts in your field, and
2 this is very complicated. I don't have any problem with,
3 and I can see some benefit of, taking it patent by patent.

4 Let me ask you, Mr. Gaudet, sounds like this would
5 be your area. Do you have any disagreement with that?

6 MR. GAUDET: Since Mr. Jameson and are on the same
7 team, I would agree with him.

8 MR. JAMESON: It's the first time he's ever agreed
9 with me, Your Honor.

10 MR. GAUDET: The good thing is this is on the
11 record. I will just add this one thing. When he said the
12 parties actually proposed that, we proposed exactly going
13 patent by patent and then having final modules, so at least
14 that's what I think we all had in mind.

15 Okay. Mr. Andre, do you agree?

16 MR. ANDRE: Yes, Your Honor, we agree. We agree
17 that the Thursday session -- not necessarily do opening
18 statements but tutorials. Each witness -- give the
19 tutorial, and there's no cross-examination of the
20 tutorialist, and then on Friday I guess our single witness.
21 I'm not sure how long that would take. I wouldn't imagine
22 in his original testimony, well, less than an hour,
23 cross-examination and redirect, probably re-cross. Then we
24 are going to do a kind of a quasi-closing argument on a
25 patent-by-patent basis and issue-by-issue basis. So we

1 would start with the '193 patent first, and the '176, and do
2 one at a time. We would do our closing; they would do
3 theirs. So I agree with Mr. Jameson that it would probably
4 go into Monday. Might not be full day on Monday but a half
5 a day on Monday as well.

6 THE COURT: All right. I generally will try to
7 start, you know, 9:30 or 10:00, generally try to go until
8 5:00. But certainly, especially if we know we are going to
9 need Monday, we get to a point on Friday that we've finished
10 one and not starting the other one at 4:00, we are going to
11 end then and take it back up on Monday so we can keep
12 everyone focused on one patent at a time.

13 So that's kind of how I expect to proceed. Does
14 that answer your question, Mr. Jameson?

15 MR. JAMESON: It does. Thank you, Your Honor.

16 THE COURT: All right. Anything else from you?

17 MR. JAMESON: No, Your Honor.

18 THE COURT: Mr. Andre, anything else that you think
19 we need to address?

20 MR. ANDRE: I don't think so, Your Honor. We are
21 good to go and look forward to seeing you in a week and a
22 half.

23 THE COURT: Okay. Well, sounds good. Thank you
24 all very much. We appreciate it.

25 MR. ANDRE: Thank you, Your Honor.

1 MR. NOONA: Thank you, Your Honor.

2 MS. KOBIALKA: Thank you.

3 (Hearing adjourned at 4:17 p.m.)

4 CERTIFICATION

5
6 I certify that the foregoing is a correct transcript
7 from the record of proceedings in the above-entitled matter.
8

9
10 X _____/s/_____ x

11 Jody A. Stewart

12 X _____6-7-2023 _____ x

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JODY A. STEWART, Official Court Reporter